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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 25th October 2011

No. 9546—li/1(B)-114/2003-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 18th May 2011 in I. D. Case No. 7 of 2004 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Biswanath Bhagabati Prasad (Petrol Pump), Gandarpur, Cuttack and its workman Shri Siba Prasad Samal, Cashier was referred to for adjudication is hereby published as in the Schedule below :

### SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 7 OF 2004

The 18th May 2011

#### *Present :*

Shri S. K. Dash,  
Presiding Officer,  
Labour Court,  
Bhubaneswar.

#### *Between :*

The Management of M/s Biswanath  
Bhagabati Prasad (Petrol Pump),  
Gandarpur, Cuttack.

.. First party—Management

And

Its workman,  
Shri Siba Prasad Samal, Cashier.

.. Second party—Workman

#### *Appearances :*

None

.. For the First party—Management

Shri S. P. Samal

.. For the Second party—Workman himself

## AWARD

The Government of Odisha in exercise of powers conferred by sub-section (5) of Section 12, read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act have referred the matter in dispute to this Court vide Order No. 286—li/1 (B)-114/2003-LE., Dt. 7-1-2004 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the termination of service of Shri Siba Prasad Samal, Cashier with effect from 6th November 2002 by way of refusal of employment by the management of M/s Biswanath Bhagabati Prasad (Petrol Pump) Gandarpur, Cuttack is legal and/or justified ? If not, what relief is Shri Samal entitled to ?”

3. The case of the workman in brief is that he was working as Cashier under the management with a monthly salary of Rs 2,200. The establishment of the management which is a Petrol Pump deals with automobile fuels and lubricants. The workman with his utmost sincerity was serving under the management in the said Petrol Pump to the best satisfaction from the year 1967. He continued in service till 5-11-2002. On 6-11-2002 his service was terminated by way of refusal of employment without complying the mandatory provisions of the Industrial Disputes Act. The workman was a senior most employee in the establishment of the management. After his termination five new persons were also appointed by the management to work. So in this background, the workman has raised an industrial dispute before the labour authority and when the conciliation failed the matter was informed to the Government and this reference has been received and this I.D. Case has been initiated wherein the workman has prayed for his reinstatement in service with full back wages.

4. The management did not appear and was set *ex parte*

5. In view of the above pleadings of the workman in order to substantiate the same, he was examined himself as W.W. 1 and proved document marked as Ext. 1.

6. The workman has filed affidavit evidence in support of his pleading. According to him, he was working under the management but the management terminated his service without complying the provisions of Section 25-F of the Industrial Disputes Act which is a mandatory and pre-condition one. He was getting Rs. 220 per month. Further according to him five persons were engaged after his termination but nothing has been substantiated in support of it. Regarding non-compliance of Section 25-F of the Industrial Disputes Act, the burden of proof lies on the management according to the settled principle of law as reported in AIR 2010 S.C. 1236. Further the evidence of the workman remained unchallenged. So on careful consideration of all the materials available in the case record as discussed above, I came to the finding that the termination of service of the workman with effect from 6-11-2002 by way of refusal of employment by the management is neither legal nor justified, and he is entitled to be reinstated in service.

7. Regarding back wages, as per settled principle of law the relief of reinstatement with full back wages would not be granted automatically only because it would be lawful to do so. For the said purpose, several factors are required to be taken into consideration. Further according to the authority reported in 2004 (Supp.) OLR 694 that when the workman had not worked for the management during the period in question and he had not proved by cogent evidence that he was not gainfully employed elsewhere, payment of back wages is not justified. However, on careful consideration of all the materials available in the case record, I am of the opinion that insteading of granting full back wages a lump sum amount of Rs. 30,000 will meet the ends of justice in this case.

## 8. Hence Ordered :

That the termination of service of Shri Siba Prasad Samal, Cashier with effect from 6-11-2002 by way of refusal of employment by the management of M/s Biswanath Bhagabati Prasad (Petrol Pump) Gandarpur, Cuttack is illegal and unjustified. The workman Shri Saml is entitled to be reinstated in service with a lump sum amount of Rs. 30,000 in lieu of back wages. The management is directed to implement this Award within a period of one month from the date of its publication failing which the amount shall carry interest at the rate of 9% (nine per cent) per annum till its realisation.

The reference is answered accordingly *ex parte*.

Dictated and corrected by me.

S. K. DASH  
18-5-2011  
Presiding Officer  
Labour Court  
Bhubaneswar

S. K. DASH  
18-5-2011  
Presiding Officer  
Labour Court  
Bhubaneswar

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By order of the Governor  
T. K. PANDA  
Under-Secretary to Government